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## **FIRST SUPERVISORY NOTICE**

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**To:** **Marshall Sterling Investment Management Limited**

**Reference Number:** **646917**

**Address:** **One Canada Square,  
37<sup>th</sup> Floor,  
Canary Wharf,  
London  
E14 5AA**

**Date:** **16 February 2021**

### **1. ACTION**

- 1.1. For the reasons given in this First Supervisory Notice ("the Notice"), and pursuant to sections 55L(2)(a), 55L(2)(c) and 55L(3)(a) of the Financial Services and Markets Act 2000 ("the Act"), the Financial Conduct Authority ("the Authority") has decided to impose the following requirements (the "Requirements") on Marshall Sterling Investment Management Limited ("the Firm"):
- (1) The Firm must terminate its relationships with the following Appointed Representatives ("ARs") under their respective AR agreements, within 14 days of the date of this Notice, and notify the Authority in writing immediately on termination, those ARs being:
    - a. CROWDJET LTD (FRN 824386) ("Crowdjet") and
    - b. WeTrade International Limited (FRN 780894) ("WeTrade").
  - (2) The Firm must terminate its relationship with its AR Thameside Technology Group (FRN 924518) ("Thameside") under its respective AR agreement within 28 days of the date of this Notice and notify the Authority in writing immediately on termination.
  - (3) With respect to the investment strategies for which Thameside arranged business as an AR of the Firm:

- (a) The Firm may, prior to the termination of its AR relationship with Thameside under Requirement 1.1(2) above, continue investment management services for the "three", "five" and "seven" investment strategies with respect to its agreements with existing clients only.
  - (b) The Firm shall not, with immediate effect, offer investment management services for any new clients for the "three", "five" and "seven" investment strategies;
  - (c) The Firm shall not, with immediate effect, accept any new contributions with respect to existing clients within the "three", "five" and "seven" investment strategies.
  - (d) The Firm must, within 14 days of the date of this Notice, agree wording with the Authority by which any existing retail consumer clients of Thameside are notified in writing of the date that Thameside will no longer be registered as an AR of the Firm and setting out its effect on them, and within 7 days thereafter notify the Authority that it has sent these notifications.
- (4) The Firm must not appoint any additional ARs without the prior written consent of the Authority, with immediate effect.
- (5) The Firm must secure all books and records, and preserve information and systems that relate to regulated activities carried on by it and the Firm's ARs, and must retain these in a form and at a location (to be notified to the Authority in writing) such that they can be provided to the Authority promptly upon request, with immediate effect.

1.2. These Requirements shall take effect immediately and shall remain in force unless and until varied or cancelled by the Authority (either on the application of the Firm or of the Authority's own volition).

## **2. REASONS FOR ACTION**

### **Summary**

2.1. The Authority has decided to take this action because it appears to the Authority that the Firm is failing, or is likely to fail, to satisfy the following Threshold Conditions set out in Schedule 6 of the Act:

- A. The appropriate resources Threshold Condition set out at paragraph 2D of Schedule 6 of the Act, that a firm's resources must be appropriate in relation to the regulated activities that it carries on or seeks to carry on, on the basis that:
  - i. The Firm does not have appropriate non-financial resources to monitor and enforce compliance by the Firm's ARs with the relevant requirements applying to their regulated activities, and has failed to adequately assess the business of the Firm's ARs in order to sufficiently identify and mitigate the risks their activities pose to consumers; and
  - ii. The Firm does not have appropriate non-financial resources as a result of its failure to implement adequate policies and procedures in relation to the oversight of the Firm's ARs.
- B. The suitability Threshold Condition as set out in paragraph 2E to Schedule

6 of the Act, that a firm must be a fit and proper person having regard to all the circumstances including the need to ensure that its affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers and whether its business is being, or is to be, managed in such a way as to ensure that its affairs will be conducted in a sound and prudent manner, on the basis of:

- i. the Firm's lack of adequate systems and controls in relation to the onboarding and ongoing monitoring of the Firm's ARs, in particular its failure to properly identify, assess and mitigate the inherent risks that arise from operating as a Principal or to properly assess their fitness and propriety, or ascertain their solvency;
- ii. The Firm failed to properly oversee and conduct ongoing monitoring of its ARs;
- iii. the Firm's lack of adequate controls over the Firm's ARs' regulated activities, in particular through its failure to terminate the registrations of Crowdjet and WeTrade which have been inactive for over 12 months (since onboarding); and its failure to ensure that an appropriate Director and approved person be appointed at the remaining active AR;
- iv. the Firm's failings in its onboarding and ongoing monitoring of the ARs demonstrate a failure to comply with several of the Authority's rules in SYSC 3 (Systems and controls), SYSC 4 (General organisational requirements) and SUP 12 (Appointed representatives), and that it appears also to be in breach of Principle 3 of the Authority's Principles for Businesses, which provides that a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems, and
- v. the inability of the Firm to demonstrate that it conducts, or will conduct, its affairs with the exercise of due skill, care and diligence.

2.2. It also appears to the Authority that it is desirable to exercise its power to impose the Requirements in order to advance its operational objective of securing an appropriate degree of protection for consumers.

### **3. DEFINITIONS**

3.1. The following definitions are used in this Notice:

"the Act" means the Financial Services and Markets Act 2000;

"AR" means Appointed Representative firm as defined within the Glossary to the Handbook;

"COBS" means the Conduct of Business Sourcebook;

"Crowdjet" means CROWDJET LTD (FRN 824386);

"the FCA" or "the Authority" means the Financial Conduct Authority;

"the Firm" means Marshall Sterling Investment Management Limited (FRN 646917);

"the Firm's ARs" or "its ARs" means Crowdjet, WeTrade and Thameside;

“FRN” means firm reference number as recorded in the Financial Services Register;

“Handbook” means the Authority’s online handbook of rules and guidance (as in force from time to time);

“Principal” means the authorised person who is party to a contract with the appointed representative, as defined within the Glossary to the Handbook;

“Principle” means one of the Authority’s Principles for Businesses;

“Requirements” means the terms imposed on the Firm by this Notice as set out in paragraphs 1.1 and 1.2 above;

“SMF” means senior management function, which is a type of controlled function under section 59 of the Act and as listed in section SUP 10C.4.3R of the Handbook in accordance with the Authority’s Senior Managers and Certification Regime, and applicable to ARs in accordance with SUP 10A.1.15R;

“SUP” means the Supervision section of the Authority’s Handbook;

“Thameside” means Thameside Technology Group (FRN 924518);

“Tribunal” means the Upper Tribunal (Tax and Chancery Chamber); and

“WeTrade” means WeTrade International Limited (FRN 780894).

#### **4. FACTS AND MATTERS**

##### Background

- 4.1. The Firm has been authorised by the Authority since 15 December 2014. The Firm’s permissions include advising on investments (except on pension transfers and pension opt outs), dealing in investments as agent, and managing investments, for customer types including eligible counterparties, professionals and retail (investment) customers.
- 4.2. The Firm is a private limited company, incorporated on 11 August 2014. It is owned and managed by its sole Director.
- 4.3. The Firm acts as Principal for its three ARs; Crowdjet, WeTrade and Thameside. An AR is an unauthorised person that enters into an agreement with an authorised firm (“the Principal”) under which the AR is permitted to carry out specific regulated activities under the responsibility of the authorised firm.
- 4.4. As Principal, the Firm is ultimately responsible for the conduct of its ARs.

##### **Failures in onboarding of ARs**

- 4.5. Between 1 November 2018 and 16 April 2020, the Firm entered into AR agreements with Crowdjet, WeTrade and Thameside.

##### *Regulatory requirements applicable to Principal firms overseeing ARs*

- 4.6. SUP sets out various regulatory requirements that apply to a Principal in respect of its ARs, as described in Annex A of this Notice. One such requirement is that, before a Principal appoints a person as an AR, and on a continuing basis, it must establish on reasonable grounds that the AR is solvent and that the Principal has adequate

controls over the regulated activities of, and resources to monitor and enforce compliance with the relevant requirements by, its ARs.

- 4.7. If at any time a Principal has reasonable grounds to believe that these conditions, amongst others, are not satisfied, or are not likely to be satisfied, in relation to any of its ARs, the Principal must either; take immediate steps to rectify the matter; or terminate its contract with the AR.
- 4.8. A Principal must also conduct an assessment of the suitability of, and make applications for approval by the Authority on behalf of, persons performing governing functions, such as directors, at its ARs.

*Inadequate assessment of fitness and propriety*

- 4.9. No adequate assessment was completed by the Firm of the fitness and propriety of the directors of Crowdjet and Thameside.
- 4.10. The Firm informed that Authority that it had obtained further information and held conversations in relation to the suitability of the directors of its ARs. However, the Firm has provided no evidence of the content of these conversations, analysis or risk assessment in relation to the material obtained, or of any challenge to the Firm's ARs in respect of the suitability of their directors.
- 4.11. The Firm's onboarding files for Thameside contained three draft applications for three further individuals to act as approved persons at the AR. There was no evidence in the Firm's onboarding file that the Firm had performed any adequate assessment of the fitness and propriety of these individuals to act as approved persons. The Firm has not gathered onboarding material about all of the directors listed at Companies House for this AR. None of these applications has been submitted to the Authority.
- 4.12. On 8 January 2021, the Authority received an application for the SMF3 (AR) Executive Director function at Thameside. The applicant is not recorded at Companies House as a director at Thameside. This applicant is also a CF1 Director (AR) for WeTrade and performs other services for the Firm directly.

*Inadequate and incomplete risk assessments and risk scoring*

- 4.13. Under SYSC 4.1.1R, a firm must have robust governance arrangements, which include effective processes to identify, manage, monitor and report the risks it is or might be exposed to. Since the Firm is ultimately responsible for the conduct of its ARs, the Firm must understand, record, monitor and mitigate risks in relation to the conduct and business of its ARs. This assessment should include consideration and mitigation of any financial crime risks, potential conflicts of interest, an understanding of the AR's business, and monitoring of the AR's compliance with its obligations.
- 4.14. Any risks identified should be recorded and monitored. Risk scoring enables a firm to identify the potential harm and likelihood of any risk, and the impact of mitigating steps on that risk score.
- 4.15. The Firm failed to identify the use of WeTrade's FRN by a Chinese firm and, accordingly, the risks in relation to this. Following feedback from the Authority's Supervision Division ("Supervision") alerting the Firm to this, the Firm updated its risk mitigation feedback plan to include this risk. Supervision has, however, identified websites still referring to the Chinese firm making use of WeTrade's FRN, which may indicate that the Firm has inadequate controls in relation to its oversight

of WeTrade, and that these issues are not being adequately addressed.

- 4.16. The onboarding file for Crowdjet contained Companies House documents which related to a different firm, the only association between them appearing to be that they shared the same director. There were no Companies House documents on file for Crowdjet. The risks around the failure to obtain Companies House documentation for Crowdjet are not recorded.
- 4.17. The business plan for Crowdjet outlined that its equity crowdfunding model matched lead investors to start-up firms to enable the start-up firms to grow and scale-up their business operations. The business plan identified some start-up firms pre-approved to raise funds through Crowdjet. These firms, which formed the basis of Crowdjet's business model all shared the same director: the director of Crowdjet. The potential conflicts of interest inherent in Crowdjet's business plan are not recorded by the Firm, and no risk mitigation plan has been created.
- 4.18. The Firm has also failed to identify that the start-up firms identified as the basis of Crowdjet's business plan were, with the exception of two firms, dissolved on 28 January 2020.
- 4.19. The Firm has not completed an onboarding log for Crowdjet and the onboarding logs for WeTrade and Thameside are incomplete. The Firm's log template is designed to capture due diligence material in relation to the ARs and for approved persons' applications at the ARs, an assessment of that material, including against the Authority's regulatory standards, and comments on the material. The failure to complete these forms appears to demonstrate that the Firm has failed to adequately gather this information, or adequately to assess it.
- 4.20. Finally, the Firm initially provided no evidence of a risk assessment conducted, on the basis of the documents collated during onboarding. ARs did not receive bespoke risk scoring which would have formed the basis of a compliance monitoring plan, and no evidence of compliance monitoring plans were provided. Subsequently, the Firm provided risk mitigation action plans for its ARs in response to feedback, which contained few recorded risks. In some instances, while mitigating actions have been identified, and the risk downgraded on the basis of these, there is no evidence that the mitigating action has in fact been implemented or that, if it were, it would adequately address the risk. For example, in respect of WeTrade, a "risk mitigant" has been recorded to set a deadline for WeTrade to set up a UK bank account, but there is no evidence that such a date has been set, or a UK bank account obtained.

*Inadequate assessment of solvency and ARs' business plans*

- 4.21. The Authority's Handbook rules in relation to ARs under SUP 12.4.2R provide that before a firm appoints a person as an AR, and on a continuing basis, it must establish on reasonable grounds that (1) the appointment does not prevent the firm from satisfying and continuing to satisfy the threshold conditions; (2) that the AR is (a) solvent; and (b) otherwise suitable to act for the firm in that capacity [...]; (3) the firm has adequate (a) controls over the person's regulated activities for which the firm has responsibility (SYSC 3.1 or SYSC 4.1); and (b) resources to monitor and enforce compliance by the person with the relevant requirements applying to the regulated activities for which the firm is responsible and with which the person is required to comply under its contract with the firm.
- 4.22. On 20 May 2019, a "Dear CEO letter" was published by the Authority in respect of ARs. This followed multi-firm work conducted by the Authority which looked at how Principal firms in the investment management sector understood and complied with their regulatory responsibilities in respect of their ARs. The Dear CEO letter noted

that the Authority's review found that most Principal firms within the Authority's review had weak or under-developed governance arrangements in place, including a lack of effective risk frameworks, internal controls and sufficient resources. The Dear CEO letter reiterated the responsibilities for Principals of AR.

- 4.23. Management accounts for an AR, and the presence of a UK corporate bank account assist a firm in being able to identify and assess the solvency, financial adequacy, creditworthiness and money laundering risks in relation to an AR.
- 4.24. The assessment of an AR's business plan by a firm, enables the firm to understand the AR's business and business model. In conducting this assessment firms should consider the products and services offered, the assumptions underlying the business model and justification for it, its financial projections, the growth strategy, and the governance and controls at the AR. This will assist a firm in assessing the feasibility of the business model, the suitability of the AR, and whether a firm has adequate controls over the AR and resources to monitor and enforce the AR's compliance with the relevant requirements.
- 4.25. Since the majority of the Firm's revenue is derived from its AR business, its assessment of solvency, the business plans of its ARs, and any associated risks, is material to the Firm being able to understand its ARs. This understanding is in turn critical for the Firm to be able to put in place adequate systems and controls to ensure it is able to monitor and enforce compliance with the regulations, and ensure that the Firm itself can meet the threshold conditions for non-financial resources and suitability.
- 4.26. The Firm has provided no evidence of any adequate assessment or analysis of the credibility of Crowdjet's business plan. This includes a failure to challenge Crowdjet on how its start-up capital of £200,000 will be sourced, or of how its projected revenue of £1,380,000 for year one is likely to be achieved.
- 4.27. The Firm failed to assess, analyse or interrogate the solvency and financial position of its ARs at the time of onboarding.
- 4.28. In addition, the Firm previously informed the Authority that Wetrade had a UK corporate bank account. But when asked by the Authority to provide evidence of such an account it was unable to do so.

*Inadequate review of investments available on Thameside's website*

- 4.29. The Firm's review of materials relating to investment products available through Thameside's website was inadequate. There was insufficient evidence that the Firm had properly reviewed those materials to ensure that they were fair, clear and not misleading.
- 4.30. The Thameside business plan stated it would build and distribute two UCITS compliant FCA regulated funds. The Illuminator and Global Alpha, both of which would be managed by the Firm. Two products with these names featured on the Thameside website. Initially, the Firm provided no due diligence or assessment on these products despite their being shown as representing up to 15% of allocations within the "three", "five" and "seven" strategies. When Supervision sought clarification on the status of the Illuminator and Global Alpha UCITS funds, the Firm provided more information and clarified that the UCITS funds were not live, but were instead, investment strategies. Accordingly, the Authority is not satisfied that the investment strategies were appropriately assessed by the Firm.
- 4.31. The "Thameside Illuminator" product was initially described on the website as giving

a 818% return since 2008. This was amended in October 2020 to read "The Illuminator UK has outperformed the FTSE-All Share Index by 818% over its duration". The plans offered on the Thameside website included holdings of between 5-15% in the Thameside Illuminator. The Firm has provided no evidence that it verified headline performance figures for this product over the date range stated to ensure the performance was marketed appropriately.

- 4.32. The Thameside website contains a Target Market Statement Document which includes information about how the portfolios meet investors' objectives and needs. This document states that these portfolios satisfy an objective of preserving capital. Along with this statement it reads, "*capital is covered by the Financial Services Compensation Scheme (FSCS) up to £85,000 in case of default*". This statement is potentially misleading as the investment objective of preserving capital is distinct from protections offered by the FSCS and these should not be conflated. This may create the impression that an investor's funds have wider protections under the FSCS than is in fact the case. There is no evidence that the Firm has identified or challenged Thameside on these statements or established whether it is satisfied with the language used.

#### **Inadequate ongoing monitoring of ARs**

- 4.33. The Firm is further required, on a continuous basis, to establish on reasonable grounds, that the appointment of its ARs does not prevent it from satisfying the Threshold Conditions, and that the Firm has adequate controls over its ARs' regulated activities for which it has responsibility, and resources to monitor them.
- 4.34. The Firm's evidence of monitoring of Crowdjet was limited to a single document which contains a statement that Crowdjet was in development stage and not conducting any regulated activities.
- 4.35. Supervision has identified several websites belonging to Crowdjet, which were operative until at least October 2020, which the Firm does not appear to have identified, therefore suggesting that they were not being monitored by the Firm.
- 4.36. With regards to WeTrade, the Firm's other purportedly inactive AR, the Firm's evidence of ongoing monitoring is limited to a brief ongoing monitoring statement. The Firm informed Supervision on 5 August 2020 that:

*"our current understanding is that as a result of the Covid-19 pandemic, the development of [WeTrade's] website and related marketing materials to potential clients has been placed on temporary hold so we have not been required to perform any monitoring of the carrying on of their regulated activities to date".*

- 4.37. Although the Firm receives monthly payments from WeTrade in exchange for its continued registration, the Firm has not adequately assessed the AR's finances to ascertain how WeTrade may be generating its cashflow despite its inactivity. Supervision asked the Firm to explain why a third-party firm was providing monies (amounting to several thousand pounds sterling per month) to WeTrade. But the Firm was unable adequately to explain the commercial rationale behind these payments.

#### **Failure to terminate relationship with ARs**

- 4.38. On 26 October 2020, Supervision informed the Firm that "in the event that an AR



is not undertaking regulated activity a Principal firm should consider the risks of allowing that AR to remain registered, to mitigate the risk that the AR's and Principal's FRN are not misused". Supervision outlined its expectation that where an AR had not undertaken regulated activities within a year of being registered, then the Firm should have considered withdrawing its registration.

- 4.39. On 25 November 2020, the Firm provided an updated version of its AR onboarding and monitoring procedures. The document included that (i) all ARs will submit applications for approved persons within three months of AR registration and prior to any regulated activities taking place, and that failure to comply with the requirement would result in termination of the AR agreement; and (ii) the AR registration should be withdrawn should no regulated activities be undertaken within a period of six months.
- 4.40. Despite Crowdjet and WeTrade purportedly being inactive, and having been so since onboarding, the Firm has not sought to deregister either AR with the Authority.
- 4.41. Between 16 April 2020 and 8 January 2021, Thameside has operated without any approved person in role, whilst conducting regulated activities nevertheless, and without any application for such a person having been submitted to the Authority, despite the Firm's policy. The Firm has provided no evidence that it has taken steps to terminate or suspend the relationship with the AR in accordance with its updated AR policy provided on 26 November 2020. Its first submitted application regarding an approved person for Thameside was received by the Authority on 8 January 2021.

#### **Engagement with Supervision**

- 4.42. On 24 July 2020, the Firm signed a voluntary requirement ("VREQ"), which took immediate effect and remains in place, which requires the Firm not to communicate, or approve the contents, of any financial promotion for the purposes of section 21 of the Act, and that the Firm must withdraw its approval of all current financial promotions that were approved by the Firm.
- 4.43. On 26 October 2020, the Authority invited the Firm to apply for a VREQ which would have required it to terminate its relationship with its ARs, and not to appoint any new ARs without the Authority's consent. The Firm has not applied to do so.

#### **Exercise of due skill, care and diligence**

- 4.44. The Firm has failed to conduct its affairs with the exercise of due skill, care and diligence in its onboarding and ongoing monitoring of its ARs, by:
- i. Failing to obtain adequate due diligence material, or to assess it, prior to the onboarding of all three ARs;
  - ii. Failing to adequately oversee, monitor and challenge its ARs once onboarded, or to recognise the need to monitor the two inactive ARs; and
  - iii. Failing to apply its policies and procedures effectively to its ARs, including failing to take steps to terminate its AR relationships when appropriate to do so.

### **5. FAILINGS AND RISKS TO OPERATIONAL OBJECTIVES**

- 5.1. The regulatory provisions relevant to this Notice are set out in the Annex.

### **Appropriate non-financial resources threshold condition**

- 5.2. It appears to the Authority that the Firm is failing, or likely to fail, to satisfy the appropriate non-financial resources threshold condition, on the basis that it appears to the Authority that it has inadequate controls over the ARs' regulated activities, for example:
- i. The Firm has failed to adequately assess the business of its ARs in order to sufficiently identify and mitigate the risks their activities pose to consumers; and
  - ii. The Firm has failed to implement adequate policies and procedures in relation to the oversight of its ARs.

### **Suitability threshold condition**

- 5.3. It further appears to the Authority that the Firm is failing, or likely to fail, to satisfy the suitability threshold condition, that a firm must be a fit and proper person having regard to all the circumstances – including the need to ensure that its affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers and whether its business is being, or is to be, managed in such a way as to ensure that its affairs will be conducted in a sound and prudent manner – on the basis of that it appears to the Authority that:
- i. The Firm failed to adequately assess the suitability of its three ARs at onboarding, in breach of SUP 12.4.2R, including failing to assess the solvency, fitness and propriety of its ARs;
  - ii. The Firm failed to properly oversee and conduct ongoing monitoring of its ARs
  - iii. The Firm failed to take action to terminate its relationship with the three ARs when two have been inactive since onboarding, and the third does not have any approved persons in role;
  - iv. The Firm failed to properly implement its policies and procedures for ARs; and
  - v. The Firm's inability to demonstrate that it conducts, or will conduct, its affairs with the exercise of due skill, care and diligence.

- 5.4. The Firm's failure to terminate its AR relationships in these circumstances leaves consumers at risk of harm, as the Firm does not appear to understand the business of its ARs and has not conducted adequate due diligence on its ARs. The ARs may therefore not be suitable to be acting as such.

### **Proportionality of the action**

- 5.5. The Authority considers that taking this action is desirable to further its consumer protection objective and is appropriate and proportionate.

## **6. PROCEDURAL MATTERS**

### Competition Act 1998

- 6.1. In accordance with section 234K of the Act, the Authority has considered whether

it would be more appropriate to proceed under the Competition Act 1998, and is satisfied that it would not be.

#### Decision-maker

- 6.2. The decision which gave rise to the obligation to give this First Supervisory Notice was made by the Chair of the Regulatory Transactions Committee.
- 6.3. This First Supervisory Notice is given under section 55Y(4) and in accordance with section 55Y(5) of the Act. Section 392 of the Act does not apply to this Notice.
- 6.4. The following statutory rights are important.

#### Representations

- 6.5. The Firm has the right to make representations to the Authority (whether or not it refers this matter to the Tribunal). The deadline for providing written representations is 10 March 2021 or such later date as may be permitted by the Authority. The address for doing so is:

Regulatory Transactions Committees Secretariat  
Corporate Governance Division  
The Financial Conduct Authority  
12 Endeavour Square  
London  
E20 1JN  
Email: [RTCsecretariat@fca.org.uk](mailto:RTCsecretariat@fca.org.uk)

- 6.6. The Authority must be informed in writing of any intention to make oral representations by 10 March 2021. If the Authority is not notified by this date, the Firm will not, other than in exceptional circumstances, be able to make oral representations.

#### The Tribunal

- 6.7. The Firm has the right to refer the matter to which this First Supervisory Notice relates to the Tribunal, which considers references arising from decisions of the Authority. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Firm has 28 days from the date on which this First Supervisory Notice is given to it to refer the matter to the Tribunal.
- 6.8. A reference to the Tribunal can be made by way of a reference notice (Form FTC3) signed by the Firm and filed with a copy of the Notice. The Tribunal's contact details are: Upper Tribunal (Tax and Chancery Chamber), 5<sup>th</sup> Floor, Rolls Building, Fetter Lane, London EC4A 1NL (telephone: 020 7612 9700; email: [uttc@justice.gov.uk](mailto:uttc@justice.gov.uk))
- 6.9. Further details are contained in "Making a Reference to the Upper Tribunal (Tax and Chancery Chamber)" which is available from the Tribunal website: <http://formfinder.hmctsformfinder.justice.gov.uk/t400-eng.pdf>
- 6.10. A copy of the reference notice (Form FTC3) must also be sent to the Authority at the same time as a reference is filed with the Tribunal. A copy of the reference notice should be sent to the Regulatory Transactions Committee Secretariat at the Financial Conduct Authority, 12 Endeavour Square, London, E20 1JN.

#### Confidentiality and publicity

- 6.11. The Firm should note that this First Supervisory Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining legal advice on its contents).
- 6.12. The Firm should note that section 391 of the Act requires the Authority, when this First Supervisory Notice takes effect (and this First Supervisory Notice takes immediate effect), to publish such information about the matter to which the notice relates as it considers appropriate.

Authority contacts

- 6.13. For more information concerning this matter generally, contact James Allyene, Enforcement and Market Oversight Division at the Authority (Tel: 020 7066 2686/ email: james.allyene@fca.org.uk).
- 6.14. Any questions regarding the procedures of the Regulatory Transactions Committee should be directed to the Regulatory Transactions Committees Secretariat by email: RTCSecretariat@fca.org.uk.

## **Annex**

### **RELEVANT STATUTORY PROVISIONS**

1. The Authority's operational objectives established in section 1B of the Act include securing an appropriate degree of protection for consumers, and protecting and enhancing the integrity of the UK financial system.
2. Section 55L of the Act allows the Authority to impose a new requirement on an authorised person if it appears to the Authority that the authorised person is failing, or likely to fail to satisfy the Threshold Conditions (section 55L(2)(a)), or it is desirable to exercise the power in order to advance one or more of the Authority's operational objectives (section 55L(2)(c)).
3. Section 55N of the Act allows a requirement to be imposed under section 55L of the Act so as to require the person concerned to take specified action (section 55N(1)(a)), or to refrain from taking specified action (section 55N(1)(b)).
4. Section 55Y(3) of the Act allows a requirement to take effect immediately (or on a specified date) if the Authority, having regard to the ground on which it is exercising its own-initiative power, reasonably considers that it is necessary for the requirement to take effect immediately (or on that date).
5. Section 391 of the Act provides that:

“[...]”

  - (5) When a supervisory notice takes effect, the Authority must publish such information about the matter to which the notice relates as it considers appropriate.
  - (6) But the Authority may not publish information under this section if in its opinion, publication of the information would, be unfair to the person with respect to whom the action was taken or proposed to be taken [or] prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.
  - (7) Information is to be published under this section in such manner as the Authority considers appropriate.”
6. Section 59(1) of the Act provides that:

“an authorised person must take reasonable care to ensure that no person performs a controlled function under an arrangement entered into by the authorised person in relation to the carrying on by the authorised person of a regulated activity, unless that person is acting in accordance with an approval given by the appropriate regulator under this section”.

### **RELEVANT REGULATORY PROVISIONS**

#### **The threshold conditions**

7. The threshold conditions represent the minimum standards which a firm is required to satisfy, and continue to satisfy, in order to be given and to retain a Part 4A Permission. They are set out in Part 1B of Schedule 6 to the Act.

8. The appropriate resources threshold condition, at paragraph 2D of Part 1B of Schedule 6 of the Act, provides, in relation to a person ("A") carrying on or seeking to carry on regulated activities which do not consist of or include a PRA-regulated activity, that:

"(1) The resources of A must be appropriate in relation to the regulated activities that A carries on or seeks to carry on.

(2) The matters which are relevant in determining whether A has appropriate resources include—

(a) the nature and scale of the business carried on, or to be carried on, by A;

(b) the risks to the continuity of the services provided by, or to be provided by, A;

(c) A's membership of a group and any effect which that membership may have."

9. Paragraph 2D(4) of Part 1B of Schedule 6 of the Act, provides that the matters which are relevant in determining whether A has appropriate non-financial resources include, amongst other matters,-

"(a) the skills and experience of those who manage A's affairs."

#### Suitability threshold condition

10. The suitability threshold condition, at paragraph 2E of Part 1B of Schedule 6 to the Act, provides in relation to a person ("A") carrying on or seeking to carry on regulated activities which do not consist of or include a PRA-regulated activity, that:

"A must be a fit and proper person having regard to all the circumstances, including—

(a) A's connection with any person;

(b) the nature (including the complexity) of the regulated activities that A carries on or seeks to carry on;

(c) the need to ensure that A's affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers and the integrity of the UK financial system;

(d) whether A has complied and is complying with requirements imposed by [the Authority] in the exercise of its functions, or requests made by [the Authority], relating to the provision of information to [the Authority] and, where A has so complied or is so complying, the manner of that compliance;

(e) whether those who manage A's affairs have adequate skills and experience and have acted and may be expected to act with probity;

(f) whether A's business is being, or is to be, managed in such a way as to ensure that its affairs will be conducted in a sound and prudent manner;

(g) the need to minimise the extent to which it is possible for the business carried on by A, or to be carried on by A, to be used for a purpose connected with financial crime.”

COND

11. COND 2.4.1A on appropriate resources, states that a firm’s resources must be appropriate in relation to the regulated activities that it carries on or seeks to carry on. [...]

And that:

(4) The matters which are relevant in determining whether a firm has appropriate non-financial resources include-

(a) the skills and experience of those who manage [the firm]’s affairs;

(b) whether [the firm]’s non-financial resources are sufficient to enable [the firm] to comply with -

(i) requirements imposed or likely to be imposed on [the firm] by the FCA in the course of the exercise of its functions; [...]

12. COND 2.4.2(2A) G states that “non-financial resources” of a firm for the purposes of the threshold conditions include any systems, controls, plans or policies that the firm maintains and the human resources that the firm has available.

13. COND 2.4.2(3) G states that “High level systems and control requirements are in SYSC. The FCA will consider whether the firm is ready, willing and organised to comply with these and other applicable systems and controls requirements when assessing if it has appropriate non-financial resources for the purpose of the threshold conditions set out in paragraphs 2D and 3C to Schedule 6 to the Act.”

14. COND 2.5.1A on suitability, states that a firm must be a fit and proper person having regard to all the circumstances, including -

(a) The firm’s connection with any person;

(b) The nature (including the complexity) of any regulated activity that the firm carries on or seeks to carry on;

(c) The need to ensure that the firm’s affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers and the integrity of the UK financial system;

(d) Whether the firm has complied and is complying with requirements imposed by the Authority in the exercise of its functions, or requests made by the Authority, relating to the provision of information to the Authority and, where the firm has so complied or is so complying, the manner of that compliance;

(e) Whether those who manage the firm’s affairs have adequate skills and experience and act with probity;

(f) Whether the firm’s business is being, or is to be, managed in such a way as to ensure that its affairs will be conducted in a sound and prudent manner; and

(g) The need to minimise the extent to which it is possible for the business carried on by the firm, or to be carried on by the firm, to be used for a purpose connected with financial crime.

15. COND 2.5.4G provides examples of the kind of general considerations to which the Authority may have regard when assessing whether a firm will satisfy, and continue to satisfy, the Suitability Threshold Condition, and include, but are not limited to, whether the firm:

(a) conducts, or will conduct, its business with integrity and in compliance with proper standards;

(b) has, or will have, a competent and prudent management; and

(c) can demonstrate that it conducts, or will conduct, its affairs with the exercise of due skill, care and diligence.

16. COND 2.5.6G provides examples of the of the kind of particular considerations to which the Authority may have regard when assessing whether a firm will satisfy, and continue to satisfy, [the suitability] threshold condition include, but are not limited to, whether:

(1) the firm has been open and co-operative in all its dealings with the Authority and any other regulatory body (see Principle 11 (Relations with regulators)) and is ready, willing and organised to comply with the requirements and standards under the regulatory system (such as the detailed requirements of SYSC [...])

1A) the firm has made arrangements to put in place an adequate system of internal control to comply with the requirements and standards for which the Authority is responsible under the regulatory system; ...

#### PRIN

17. Principle 3: A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.

#### SYSC

18. SYSC 3.1.1R: A firm must take reasonable care to establish and maintain such systems and controls as are appropriate to its business.

19. SYSC 4.1.1R: (1) A firm must have robust governance arrangements, which include a clear organisational structure with well defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks it is or might be exposed to, and internal control mechanisms, including sound administrative and accounting procedures and effective control and safeguard arrangements for information processing systems.

#### SUP

20. SUP 12.4.2R: Before a firm appoints a person as an AR, and on a continuing basis, it must establish on reasonable grounds that:

(1) The appointment does not prevent the firm from satisfying and continuing to satisfy the threshold conditions;



- (2) The AR is (a) solvent; (b) otherwise suitable to act for the firm in that capacity; and (c) has no close links which would be likely to prevent the effective supervision of the person by the firm;
  - (3) The firm has adequate (a) controls over the person's regulated activities for which the firm has responsibility (SYSC 3.1 or SYSC 4.1); and (b) resources to monitor and enforce compliance by the person with the relevant requirements applying to the regulated activities for which the firm is responsible and with which the person is required to comply under its contract with the firm; and
  - (4) The firm is ready and organised to comply with the other applicable requirements contained or referred to in SUP 12.
21. SUP 12.5.5(2)R: A firm must ensure that its written contract with each of its appointed representatives: [...] (2) requires the appointed representative to comply, and to ensure that any persons who provide services to the appointed representative under a contract of services or a contract for service comply, with the relevant requirements in or under the Act (including the rules) that apply to the activities which it carries on as appointed representative of the firm.
  22. SUP 12.6.1R: If at any time a firm has reasonable grounds to believe that the conditions in SUP 12.4.2 R, 2SUP 12.4.6 R or SUP 12.4.8A R2 (as applicable) are not satisfied, or are likely not to be satisfied, in relation to any of its appointed representatives, the firm must:
    - (1) take immediate steps to rectify the matter; or
    - (2) terminate its contract with the appointed representative.
  23. SUP 10A.1.15R: The descriptions of the following FCA controlled functions apply to an appointed representative of a firm, except in relation to CBTL business or an introducer appointed representative, as they apply to an FCA-authorized person:
    - (1) the FCA governing functions, subject to SUP 10A.1.16 R and except for a tied agent of an EEA MiFID investment firm; and
    - (2) the customer function other than in relation to acting in the capacity of an investment manager (see SUP 10A.10.7R (6)).

### The Enforcement Guide

24. The Authority's approach in relation to its own-initiative powers is set out in Chapter 8 of the Enforcement Guide (EG), certain provisions of which are summarised below.
25. EG 8.1.1 reflects the provisions of section 55L of the Act by stating that the Authority may use its own-initiative power to impose requirements on an authorised person where, amongst other factors, the person is failing or is likely to fail to satisfy the threshold conditions for which the Authority is responsible (EG 8.1.1(1)), or it is

desirable to exercise the power in order to advance one or more of its operational objectives (EG 8.1.1(3)).

26. EG 8.2.1 states that when the Authority considers how it should deal with a concern about a firm, it will have regard to its statutory objectives and the range of regulatory tools that are available to it. It will also have regard to the principle that a restriction imposed on a firm should be proportionate to the objectives the Authority is seeking to achieve (EG 8.2.1(2)).
27. EG 8.2.3 states that in the course of its supervision and monitoring of a firm or as part of an enforcement action, the Authority may make it clear that it expects the firm to take certain steps to meet regulatory requirements. In the vast majority of cases the Authority will seek to agree with a firm those steps the firm must take to address the Authority's concerns. However, where the Authority considers it appropriate to do so, it will exercise its formal powers under section 55L of the Act to impose a requirement to ensure such requirements are met. This may include where, amongst other factors, the Authority has serious concerns about a firm, or about the way its business is being or has been conducted (EG 8.2.3(1)), or is concerned that the consequences of a firm not taking the desired steps may be serious (EG 8.2.3(2)).
28. EG 8.3.1 states that the Authority may impose a requirement so that it takes effect immediately or on a specified date if it reasonably considers it necessary for the requirement to take effect immediately (or on the date specified), having regard to the ground on which it is exercising its own-initiative powers.
29. EG 8.3.2 states that the Authority will consider exercising its own-initiative power as a matter of urgency where: 1) the information available to it indicates serious concerns about the firm or its business that need to be addressed immediately; and 2) circumstances indicate that it is appropriate to use statutory powers immediately to require and/or prohibit certain actions by the firm in order to ensure the firm addresses these concerns.
30. EG 8.3.3 states that it is not possible to provide an exhaustive list of the situations that will give rise to such serious concerns, but they are likely to include one or more of four listed characteristics, these include: 1) information indicating significant loss, risk of loss or other adverse effects for consumers, where action is necessary to protect their interests; 2) information indicating that a firm's conduct has put it at risk of being used for the purposes of financial crime, or of being otherwise involved in crime; 3) evidence that the firm has submitted to the Authority inaccurate or misleading information so that the Authority becomes seriously concerned about the firm's ability to meet its regulatory obligations; 4) circumstances suggesting a serious problem within a firm or with a firm's controllers that calls into question the firm's ability to continue to meet the threshold conditions.
31. EG 8.3.4 states that the Authority will consider the full circumstances of each case when it decides whether an imposition of a requirement is appropriate and sets out a non-exhaustive list of factors the Authority may consider, these include:

(4) The seriousness of any suspected breach of the requirements of the legislation or the rules and the steps that need to be taken to correct that breach.

(8) The firm's conduct. The FCA will take into account:

(a) whether the firm identified the issue (and if so whether this was by chance or as a result of the firm's normal controls and monitoring);

(b) whether the firm brought the issue promptly to the FCA's attention;

(c) the firm's past history, management ethos and compliance culture;

(d) steps that the firm has taken or is taking to address the issue.

32. EG 8.3.4(9) includes the impact that use of the Authority's own-initiative powers will have on the firm's business and on its customers. The Authority will need to be satisfied that the impact of any use of the own-initiative power is likely to be proportionate to the concerns being addressed, in the context of the overall aim of achieving its statutory objectives.